

1 the Wireless Bureau and -- and Westel may have additional
2 questions of these people based upon the modification of issue
3 one. But that doesn't necessarily mean they would have to be
4 redeposed on everything that they were asked before. What I'm
5 trying to do is avoid, really avoid, harassing these people any
6 more -- any more than would be necessary.

7 So I'm not going to restrict you in terms of who you
8 can depose because Mr. Easton has never deposed Miss Hamilton.
9 ClearComm has never deposed Miss Hamilton. I think you ought to
10 have a -- have a shot at her and anybody else that you want to
11 ask questions of. But I would just ask that if it's possible
12 not to go over an area, that you don't do it, you know, because
13 it really isn't very pleasant for anybody -- especially the
14 witnesses.

15 Anybody have any questions about that?

16 MR. GORDIN: Your Honor, Richard Gordin.

17 JUDGE STEINBERG: Yes, sir.

18 MR. GORDIN: Just a matter of clarification, if I can
19 state my understanding of what your Honor just suggested. We
20 not needlessly go over areas that have already been gone over.
21 To some extent obviously, particularly with this new issue,
22 there may be some areas that because of the examination, type of
23 questions need to be inquired into again.

24 JUDGE STEINBERG: Yeah. That's fine.

25 MR. GORDIN: But the parties should do their best not

1 to --

2 JUDGE STEINBERG: Yeah.

3 MR. GORDIN: -- not to duplicate unnecessary --

4 JUDGE STEINBERG: Yeah. Right. You know, obviously
5 if you -- if you had been at her deposition, I -- I kind of feel
6 that part of this is my fault because I booted you out of one of
7 the depositions; although I do remember saying that San
8 Francisco -- you could be stuck in worse places than San
9 Francisco for the day with nothing to do.

10 But had you been there -- you got the transcript. And
11 you see a question; you see an answer. And there's no follow
12 up. There's no further inquiry into that. Of course, you can
13 ask that. And if you have to ask a preliminary question -- you
14 know, "You testified at your November" -- I guess it was
15 November -- "November deposition, blah, blah, blah; is that
16 correct? Yeah. Here's the deposition. Let me ask you some
17 more questions on that that weren't asked" -- that's fine, and
18 of course -- of course, new areas. And, you know, that's fine,
19 too.

20 But if -- if all you're doing is asking the same
21 question and getting the same answer, you know, over and over
22 and over again, I don't think that's -- I don't think that's
23 right. You've already got it, and it's already -- it's already
24 there. And if -- so I would ask you to use some self-restraint.

25 Okay. Can you anticipate any other kind -- kind of

1 discovery? I don't want you to use interrogatories because
2 they're just a mess.

3 MR. CARROCCIO: Except to the Bureau, correct, your
4 Honor?

5 JUDGE STEINBERG: Right. You have to use them to the
6 Bureau.

7 MR. GORDIN: Your Honor, I don't know and would
8 inquire whether the previous order set out any schedule for
9 expert witnesses, and if that would be contemplated just as part
10 of the normal deposition schedule, your Honor, without any --

11 JUDGE STEINBERG: Yeah. That's --

12 MR. GORDIN: -- special --

13 JUDGE STEINBERG: No, just do it all. You know,
14 there's no -- what kind of experts? You mean, computer experts
15 and stuff?

16 MR. GORDIN: Having read some of the material that's
17 been raised in the past, I can see where that might come up.

18 JUDGE STEINBERG: You mean like how do you erase
19 something off of a hard disk without it not being able to be
20 undeleted?

21 MR. GORDIN: For example, yes, your Honor.

22 JUDGE STEINBERG: Just -- I just pulled that out of
23 the top of my head. Let the record reflect humor.
24 (Laughter.)

25 MR. GORDIN: Will there be --

1 JUDGE STEINBERG: Just -- just roll that into the
2 deposition schedule.

3 MR. GORDIN: If there are no interrogatories, is there
4 going to be a procedure whereby the parties at a certain point
5 in time could designate or designate in response to experts?

6 JUDGE STEINBERG: No. Just notice them for deposition
7 and depose them.

8 MR. GORDIN: But there will be no -- what I'm asking,
9 your Honor, is there a procedure whereby, for example, if Mr.
10 Carroccio or Mr. Easton or Miss Power is going to be presenting
11 an expert that I can ask and discover whether or not they will
12 be using an expert and what topics the expert will be testifying
13 on so that I --

14 JUDGE STEINBERG: That should be in the notice of
15 deposition, what the -- what the -- what the area of inquiry is,
16 what the scope of the inquiry is. I would say -- you know,
17 that's a good point. And I would say if you're -- if you're
18 going -- if you're going to depose somebody like that, I think
19 the notice of deposition should be quite detailed as to what --
20 what the areas of inquiry are. With the fact witnesses, I don't
21 think you really need that as much. And usually the notice of
22 deposition are to testify on facts relevant to issue one or
23 issue two.

24 I think everyone knows what those people are going to
25 be asked. But with respect to experts, maybe the notice of

1 deposition has to be very specific as to what the expert is
2 going to be asked.

3 MR. CARROCCIO: Your Honor --

4 MR. GORDIN: Your Honor, perhaps if I could clarify a
5 little bit more. Your Honor said that there's no
6 interrogatories to the parties except for the Bureau.

7 JUDGE STEINBERG: Yeah.

8 MR. GORDIN: Normally in discovery one would find out
9 the experts by serving an interrogatory on the opposing side
10 saying, "Do you have any experts and what will they be
11 testifying about?" How -- in order to notice the expert, I need
12 the expert's name and subject matter.

13 JUDGE STEINBERG: Oh, I --

14 MR. GORDIN: So --

15 JUDGE STEINBERG: Well --

16 MR. GORDIN: -- does your Honor want to have any
17 procedure --

18 JUDGE STEINBERG: Okay. Traditionally the way things
19 are done at the -- at the FCC -- oh, I see. If Mr. Lukas wants
20 to put an expert on and the first notice that you're getting of
21 who the expert is is in his list of witnesses, then you -- then
22 you won't have an opportunity to depose him --

23 MR. GORDIN: Yes.

24 JUDGE STEINBERG: -- but -- okay. That usually
25 doesn't happen in FCC case, but I can understand where you're

1 coming from. Okay. If you want to -- if you want to limit
2 interrogatories for that purpose.

3 Does anybody have any comment on that? Mr. Carroccio?

4 MR. CARROCCIO: Your Honor, maybe it would be more
5 efficacious if we just had a date by which anybody who intends
6 to call an expert or utilize an expert witness was required to
7 give notice to all other parties of their expert witnesses, and
8 that would afford -- and have that notice date the sufficient
9 time to notice the actual deposition of the -- of that witness.
10 I think it's more efficacious than having everybody exchanging
11 interrogatories.

12 JUDGE STEINBERG: Well, how about -- how about if
13 we -- if -- if we can reach an agreement that rather than having
14 it in writing or formal order or anything, everybody agrees to
15 notify everybody else by that certain -- I like that idea
16 because that minimizes the paper. But you basically would --
17 that date would have to be fairly late, I imagine, because you'd
18 want to see the other discovery before you determined whether
19 you needed an expert.

20 MR. CARROCCIO: Well, your Honor, if we go too late
21 into discovery, then we don't have time to discover -- to take
22 discovery on the expert.

23 JUDGE STEINBERG: Okay. Let's -- let's leave
24 that -- let's leave that open, and we'll talk about that when we
5 talk about dates because then we'll have more of a firm concept

1 of the timing of this.

2 Okay. Let me just say with respect to discovery, I'd
3 like everybody to make a good faith effort to work out your
4 differences among yourselves. You should make a serious and
5 genuine effort to reach compromise. And I don't want anybody
6 coming to me for a ruling on the discovery matter without first
7 trying to reach a compromise with your opponent. If you can't
8 get the whole loaf, see if you can get half the loaf.

9 And I want the effort to be good faith and genuine and
10 not just going through the motions of "Well, can we reach a
11 compromise? I guess we can't; so we'll go for the judge." So
12 we'll go for a ruling with the judge. I want you to ask me for
13 a ruling only -- and I'll emphasize only -- if there's a
14 complete inability to reach any kind of accommodation.

15 Okay. Before we talk about dates, is there anything
16 else we need to talk about? Okay. Why don't we go off the
17 record, and we'll talk about dates.

18 (Off the record 10:15 a.m.)

19 (On the record 11:15 a.m.)

20 JUDGE STEINBERG: Okay. While we were off the record,
21 we agreed on the following procedural dates: On May 15 there
22 will be an expert witness notification. By that, it is
23 understood to -- I understand it to mean that each party will
24 notify the opposing parties as to the identity of any expert
25 witnesses that -- that they expect to call to testify and the

1 subject matter of that expert witness's testimony.

2 May 29, 1998 there will be an exchange of written
3 statements of the expert witnesses. On June 26, 1998 -- that's
4 the date set for completion of all discovery. And completion
5 means completion; that everything has to be finished by that
6 date. July 13, 1998 there will be exchange of written direct
7 case exhibits. And if oral testimony is to be offered, the
8 exchange shall include an identification of each witness and an
9 outline of the testimony that they are expected to give.

10 I also want you to, on that date, provide a list
11 identifying the sponsor of each exhibit so that there's no
12 question as to -- as to who's going to be sponsoring what
13 exhibit, you know, the primary sponsor. It's possible for
14 witnesses, many witnesses, to be asked questions about the same
15 exhibit. But whoever is sponsoring that exhibit is to be
16 listed.

17 Okay. August 6, 1998 we will have an admission
18 session. And at the admission session we will notify -- the
19 parties will notify each other of the witnesses that they desire
20 to have for cross-examination, and that will commence at 9:30
21 a.m. in the Commission's Washington D.C. offices. On August 25,
22 1998 we'll have commencement of the hearing at 9:30 a.m. in the
23 Commission's Washington D.C. offices.

24 Now there's something I want to explain to you about
25 the exhibits and how I want the pages numbered. I want every

1 exhibit to be separately paginated. You put the number one on
2 the first page, and you put consecutive numbers through the end
3 of the exhibit even -- if the exhibit has 277 attachments, the
4 number one appears on the first page and all the pages are
5 numbered consecutively until the end. And -- so that when we're
6 asking the witnesses -- witnesses a question, you don't have to
7 say, "Look at Exhibit 1, tab four, subsection three, page X."
8 You can take a look -- look at page 277.

9 And that's the way I want it done. And if it's not
10 done that way, you're going to get the exhibits back and
11 somebody is going to write a page number on every page. And
12 start with the number one at the beginning of every exhibit. If
13 the exhibit's got a cover sheet, you don't have to put a number
14 on the cover sheet, but the -- you know, the first page of the
15 text.

16 And this is going to be a footnote in my order that
17 says this: I'd like on the exhibit exchange date, July 13,
18 everybody coordinated so that everybody receives the exhibits on
19 that date, not that they're put in the mail or put in the
20 courier service; that everybody actually has them in hand on the
21 13th.

22 Okay. And I covered the -- an identification of the
23 sponsor of each exhibit also. Okay. Any -- any -- any
24 questions? The -- Mr. Carroccio talked about the admissions
25 requests, and Miss Power was kind enough to lend me her copy of

1 the rules and -- a new 20 days. Under 1.246 there was an order
2 released adding parties and changing the issues; so you can file
3 within 20 days. We're going to go through the same thing we did
4 before.

5 MR. CARROCCIO: I understand, your Honor. We also
6 have a new party being added by an order that you indicated you
7 will be issuing with regard to ClearComm, and I thought that for
8 conformity of our -- and to avoid that -- I thought we could
9 agree on a date for admissions, especially, as I said, in light
10 of the fact we have a new party in --

11 JUDGE STEINBERG: You all come up with a date, and
12 I'll agree to it.

13 MR. CARROCCIO: I would -- I would suggest, your
14 Honor, that we have April 30, if that's a -- if there's
15 any requests for admissions by April 30.

16 JUDGE STEINBERG: This is March, right?

17 MR. CARROCCIO: It's March 24, your Honor.

18 JUDGE STEINBERG: Okay. It's basically a
19 two-week -- a little more than two weeks.

20 MR. CARROCCIO: It's two weeks longer than normal, and
21 I -- it just gives the parties the opportunity and incentive to
22 get some stipulations worked out and clean up discovery -- clean
23 up the need for discovery is what we would really like to see.

24 JUDGE STEINBERG: Anybody have any objection to that?
25 Miss Power?

1 MS. POWER: No, your Honor, not in theory.

2 JUDGE STEINBERG: Mr. Pettit?

3 MR. PETTIT: No. I don't believe so, your Honor.

4 JUDGE STEINBERG: Mr. Lukas?

5 MR. LUKAS: That's acceptable.

6 JUDGE STEINBERG: Okay. So, well, you know --
7 that's April 30. I'm not going to -- that's a ruling on the
8 record here, request for admissions. And if you can work
9 something out in terms of stipulations and whatever, do that.
10 I'll also say that toward the end of discovery, when everybody's
11 had an opportunity to see what all is out there, if you could
12 get together and stipulate to 90 percent of the case, that would
13 be wonderful. But I'm not holding my breath.

14 You know, just -- I've seen it tried too many times,
15 and it just -- sometimes it's just easier to get in here and
16 just move on with the case. Okay. Anything further that we
17 need to do, Miss Power?

18 MS. POWER: No, your Honor --

19 JUDGE STEINBERG: Mr. Pettit?

20 MS. POWER: -- not from me.

21 MR. PETTIT: No, sir.

22 JUDGE STEINBERG: Mr. Carroccio?

23 MR. CARROCCIO: No, your Honor.

24 JUDGE STEINBERG: Mr. Lukas?

25 MR. LUKAS: Unfortunately, I have one more matter.

1 JUDGE STEINBERG: That's fine.

2 MR. LUKAS: I did advise the Trust that they're -- if
3 they wanted to intervene, it would be -- it would run from the
4 Federal Register day. I believe there is grounds for a good
5 faith disagreement as to what the requirements are. I'm
6 assuming that Miss Power is going to try to get a clarification
7 from Mr. Riffer.

8 MS. POWER: The General Counsel's office, yes.

9 MR. LUKAS: Right. You know, it could be -- I
10 understand your ruling. And perhaps would you entertain a
11 motion for leave delayed file based on a good faith mistake as
12 to the --

13 JUDGE STEINBERG: If -- see, I had this problem with
14 ClearComm. I don't know. If they want to petition to intervene
15 and they know that today, why don't they file tomorrow? Why are
16 they sitting there waiting until the last possible minute? It
17 only screws things up. It makes people go to San Francisco
18 unnecessarily and waste a whole day in San Francisco when the
19 weather is so beautiful at the end of November.

20 But, I mean, I just understand why if they -- if they
21 want to intervene, they don't just file a darn motion and get it
22 resolved at the earliest possible moment. And that's -- you
23 know, that's my feeling on it. And by waiting and waiting and
24 waiting, it only screws things up. And I think I expressed a
25 little bit of -- when we were on the record in the deposition

1 with Miss Milstein, I think I expressed a little bit of
2 displeasure with ClearComm for waiting and waiting and waiting,
3 because the thing could have been resolved two months earlier.
4 And I'll say the same thing with respect to the S.D.E Trust.

5 MR. LUKAS: I was belaboring under the 20 days, and
6 they still have at least 10 more days to make --

7 JUDGE STEINBERG: Yeah. I mean, if --

8 MR. LUKAS: -- that's sufficient.

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1 JUDGE STEINBERG: Somebody make a decision and do it.
2 And, you know, why wait? It will take how -- it will take maybe
3 a week to get the thing published in the Federal Register and 30
4 days after that and half the discovery time is gone. And, you
5 know, under these -- under these circumstances maybe they
6 won't -- maybe they'll be bound by the June 26 discovery
7 deadline.

8 Okay. But, you know, they're on notice --

9 MR. LUKAS: Yes, your Honor.

10 JUDGE STEINBERG: -- as to what my feelings are about
11 it, but that will not affect my ruling. You know, it will be
12 whatever the merits are, that's -- that's what they'll be.
13 Okay.

14 Anything further?

15 (No response.)

16 JUDGE STEINBERG: Then we'll be in recess until --
17 until the next time we won't be in recess. Off the record.

18 (Whereupon at 11:25 a.m. the court was ajourned until the case
19 is rescheduled.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT97-199
CASE TITLE: Westel Samoa
HEARING DATE: March 24, 1998
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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